

MONTANA LEGISLATIVE HISTORY

Chapter 2 19 71 Ex. L. #1

Bill H _____ S 5 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) _____ C

These minutes
were not
recorded. _____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) Mar 12 ☒ C

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Mar 12 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

EXTRAORDINARY SESSION

SENATE JUDICIARY COMMITTEE MEETING--March 17, 1971

The meeting was called to order by the Chairman, Senator Gilfeather. All the members were present with the exception of Senator Sheehy and Senator Hafferman.

Extraordinary Senate Bill No. 5 was brought to the attention of the committee by the Chairman. Senator Turnage read the proposed amendments to this bill. The amendments were then discussed by Senators Gilfeather, Turnage, Moore and others.

The proposed amendments are:

Amend Section 14 on page 18 of the original introduced bill by omitting this section in its entirety and inserting in lieu thereof the following:

"Section 14. Ex parte consultations. Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, shall not communicate with any party or his representative in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate."

And be further amended in Section 26 in line 1 of page 26 of the original introduced bill by omitting the following: "January 1, 1973" and inserting in lieu thereof the following: "December 31, 1972."

AND AS SO AMENDED, DO PASS.

The Chairman asked if there was any further discussion of these amendments. There was none. Senator Turnage MOVED THE ADOPTION OF THE AMENDMENTS, SECONDED BY SENATOR MOORE. SENATOR TURNAGE MOVED THAT EXTRAORDINARY SENATE BILL NO. 5, AS AMENDED, DO PASS. THIS WAS SECONDED BY SENATOR MOORE.

There was no further business to come before the committee and the meeting was adjourned.



SENATOR P. J. GILFEATHER, CHAIRMAN

CHAPTER 1

SESSION LAWS

Records. (9) The commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the commission during regular office hours.

State agencies—cooperation. (10) Upon request, state agencies shall cooperate with the commission by furnishing assistance and data to the extent possible.

Federal funds. (11) The commission may accept and expend any federal funds which may be available for support of the preparatory study.

Report of findings—recommendations. (12) The commission shall report its findings and any recommendations it considers necessary to the convention and transfer its files to the constitutional convention within ten (10) days after the constitutional convention has convened.

Appropriations. *Section 21. (1) The following amount is appropriated from the general fund to the constitutional convention commission:*

For the period ending February 1, 1972 \$149,540

Any amount unexpended from this appropriation on February 1, 1972 is appropriated to the constitutional convention for the biennium ending June 30, 1973.

(2) The following amount is appropriated from the federal and private revenue fund to the constitutional convention commission:

For the period ending February 1, 1972 \$146,461

Any amount unexpended from this appropriation on February 1, 1972 is appropriated to the constitutional convention for the biennium ending June 30, 1973.

(3) The following amount is appropriated from the general fund to the constitutional convention:

For the biennium ending June 30, 1973 \$499,281

(4) The following amount is appropriated from the general fund to the secretary of state for the elections relating to the constitutional convention:

For the biennium ending June 30, 1973 \$ 41,000

FORTY-SECOND LEGISLATIVE ASSEMBLY

CHAPTERS 1-2

Section 22. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act. **Severability clause.**

Section 23. This act is effective on its passage and approval. **Effective immediately.**

Section 24. This act is repealed effective June 30, 1973. **Repealed June 30, 1973.**

Section 2. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act. **Severability clause.**

Section 3. This act is effective on its passage and approval. **Effective immediately.**

Section 4. This act is repealed effective June 30, 1973. **Repealed June 30, 1973.**

Approved March 31, 1971.

CHAPTER NO. 2

An Act Prescribing Uniform Procedures for State Administrative Agencies, Including: Requirement for Adoption of Procedural Rules; Procedures for Adoption, Amendment or Repeal of Rules, Including Emergency Rules; Filing and Publication of Rules; Judicial Notice of Rules; Notice and Hearing Requirements for Contested Cases; Procedures for Contested Case Hearings; Procedures for Decision Making in Contested Cases; Judicial Review of Contested Case Decisions; Declaratory Rulings By Agencies; Declaratory Judgments By Courts Regarding the Validity and Application of Agency Rules; Subpoenas, Subpoena Enforcement and Compelling Testimony for Agency Proceedings; and Right to Representation in Agency Proceedings; to Provide an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

TITLE AND DEFINITIONS

Section 1. **Short title.** This act shall be known and may be cited as the "Montana Administrative Procedure Act." **"Montana administrative procedure act."**

Section 2. **Definitions.** For purposes of this act: **Definitions.**

"Agency."

(1) "Agency" means any board, bureau, commission, department, authority or officer of the state government authorized by law to make rules and to determine contested cases, except that the provisions of this act shall not apply to the following:

Exemptions.

(a) the legislature and any branch, committee or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency otherwise covered by this act shall not be exempt because the governor has been designated as a member thereof;

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack;

(e) the state board of pardons, except that said board shall be subject to the requirements of section 3 and 5 of this act and its rules shall be published in the Montana administrative code and register;

(f) the supervision and administration of any penal, mental, medical or eleemosynary institution with regard to the admission, release, institutional supervision, custody, control, care or treatment of inmates, prisoners or patients;

(g) the administration and management of educational institutions;

(h) the financing, construction and maintenance of public works.

"Rule."

(2) "Rule" means each agency regulation, standard or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule, but does not include:

Exclusions.

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to section 18 of this act;

(c) intra-agency memoranda;

(d) rules relating to the use of public works, facilities, streets and highways, when the substance of such rules is indicated to the public by means of signs or signals;

(e) seasonal rules adopted annually relating to hunting, fishing and trapping when there is a statutory requirement for the publication of such rules, and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(f) rules relating to personnel standards, job classifications or salary ranges for agency employees;

(g) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with section 10 of this act and shall be published in the Montana administrative code and register.

(3) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing. The term includes, but is not restricted to, rate making, price fixing and licensing. "Contested case."

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or other form of permission required by law, but does not include a license required solely for revenue purposes. "License."

(5) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation or amendment of a license. "Licensing."

(6) "Party" means any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes. "Party."

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public organization of any character other than an agency. "Person."

RULE MAKING

Section 3. Rules describing agency organization and procedures — public inspection of rules — model rules.

Duties of agency.

(1) In addition to other rule making requirements imposed by law, each agency shall:

Rule—description of organization.

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

Rules of practice.

(b) Adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

Public inspection.

(c) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions.

Copies.

(d) Upon request of any person or agency, provide a copy of any rule. Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

Validity.

(2) No agency rule shall be valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

Duty of attorney general to prepare model forms.

(3) The attorney general shall prepare, as soon as is practicable after the passage of this act, a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of section 3 (1). The attorney general shall add to, amend or revise the model rules from time to time as he shall deem necessary for the proper guidance of agencies. The model rules, and additions, amendments or revisions thereto, shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules shall not relieve the agency from following the rule making procedures required by this act.

Section 4. Adoption — amendment or repeal of rules — emergency rules. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall:

Prior to adoption.

(a) Give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, place where, and manner in which interested persons may present their views thereon. The notice shall be filed with the secretary of state for publication in the Montana administrative register as provided in section 6 (2) of this act and mailed to persons who have made timely requests to the agency for advance notice of its rule making proceedings. The notice shall be published and mailed at least twenty (20) days in advance of the agency's intended action. If any statute shall provide for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case shall the notice period be less than twenty (20) days.

Notice of intent.

Filing—publication.

Mailing.

20 days in advance.

(b) Afford interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either ten percent (10%) or twenty-five (25) of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency or by an association having not less than twenty-five (25) members who will be directly affected. Contested case procedures need not be followed in hearings held pursuant to this section. Where a hearing is otherwise required by statute, nothing herein shall be deemed to alter that requirement. The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

Submissions.

Hearing on request.

Consideration of submissions.

Statement of reasons on request.

(2) If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than twenty (20) days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated

Emergency procedures—findings.

notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than one hundred and twenty (120) days, but the adoption of an identical rule under subsections (1) (a) and (1) (b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety or welfare shall be subject to judicial review.

Validity.

(3) No rule adopted after the effective date of this act shall be valid unless adopted in substantial compliance with subsections (1) and (2) of this section.

Agency may use informal hearings, advisory committees.

(4) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule making procedures required by this act.

Statutory references.

(5) Rules shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language. Each rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

Annual review of rules.

(6) Each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

Filing of rules with secretary of state.

Section 5. Filing of rules — effective date of rules.

(1) On or before the 60th day following the effective date of this act, each agency shall file with the secretary of state a certified copy of each rule adopted by it on or before the effective date of this act and remaining in effect. Any rule not so filed shall be deemed to have been abrogated by the agency and shall be void and of no effect.

Filing subsequent rules.

(2) Each agency shall file with the secretary of state a certified copy of each rule adopted by it subse-

quent to the effective date of this act. Each rule shall become effective ten (10) days after publication in the Montana administrative register or code as provided in section 6 of this act, except that:

Effective dates—publication.

(a) If a later date is required by statute or specified in the rule, the later date shall be the effective date.

Later date.

(b) Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state, or at a stated date less than ten (10) days following publication in the Montana administrative code or register, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

Effective date—emergency rule—filing—publication.

Dissemination.

(3) The secretary of state may prescribe a format, style and arrangement for rules which are filed pursuant to this act and may refuse to accept the filing of any rule that is not in substantial compliance therewith. He shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules), which shall be open to public inspection, and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.

Format for filing.

Permanent register.

Section 6. Publication and distribution of rules and notices.

(1) The secretary of state shall, as soon as is practicable after the effective date of this act, compile, index and publish all rules filed pursuant to this act in a publication which shall be known as the Montana administrative code (herein referred to as the code). The code shall be printed or otherwise duplicated, in loose leaf form. The secretary of state shall revise the code, or any part thereof, as often as he deems necessary.

Secretary of state shall publish Montana administrative code.

Loose leaf form.

Revision.

(2) The secretary of state shall each month compile and publish the Montana administrative register (herein referred to as the register). The register shall contain two (2) sections, a rules section and a notice section.

Monthly publication—Montana administrative register.

(a) The rules section of the register shall contain all rules filed with the secretary of state since the com-

Rules section.

pilation and publication of the preceding issue of the register, and in the case of the first issue, since the effective date of this act, except that nothing herein shall require that rules filed pursuant to section 5 (1) be published in the register. This section of the register shall be printed or duplicated in the same style as the code and shall be set up so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.

Notice section.

(b) The notice section of the register shall contain all rule making notices filed with the secretary of state pursuant to section 4 of this act since the compilation and publication of the preceding register, and in the case of the first issue of the register, since the effective date of this act. This section shall be printed or duplicated in such manner as to make it easily distinguishable from the rules section of the register and so that separate copies of the notice section can be provided to any person upon request to the secretary of state. The secretary of state may require the payment of the cost of providing such copies.

Title page.

(c) Each issue of the register shall contain a title page with the name "Montana administrative register", the issue number and date of the register, and a table of contents. Each page of the register shall contain the issue number and date of the register of which it is a part. The secretary of state may include in the register instructions or information to help the user in correctly making insertions or deletions in the code and to keep the code current.

Other pages.

Instructions.

Permissive omissions.

(3) The secretary of state, with the consent of the adopting agency, may omit from the code or register any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or register contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.

Arrangement for separate publications.

(4) The code shall be arranged, indexed and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate

publications as it may require. The cost of any such separate publications shall be paid by the agency. Costs.

(5) The secretary of state shall distribute copies of the code, revisions thereto and the register without charge to the following: Distribution of copies.

Attorney general, one (1) copy;

Clerk of each court of record of this state, one (1) copy;

Clerk of United States district court for the district of Montana, one (1) copy;

Clerk of United States court of appeals for the ninth circuit, one (1) copy;

Each county clerk of this state, for use of county officials and the public, one (1) copy;

State law library, one (1) copy;

State historical society, one (1) copy;

Each unit of the university of Montana, one (1) copy;

Law library of the university of Montana, one (1) copy;

Montana legislative council, three (3) copies;

Library of congress, one (1) copy;

State law library, for such exchanges as it may establish with libraries of other states, not to exceed fifty (50) copies;

Law library of the university of Montana, for such exchanges as it may establish with institutions of higher education in other states, not to exceed fifty (50) copies.

The secretary of state, clerk of each court of record in the state, clerk of each county in the state and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of the code, including revisions thereto and additions or changes published in the register. Such persons shall also maintain a file of rule making notices published in the register during the preceding two (2) years. The secretary of state shall also maintain a permanent register of rule making notices. Duty to maintain complete, current sets.

Subscriptions. (6) The secretary of state shall make copies of and subscriptions to the code, revisions thereto and the register available to any person at prices fixed to cover publication and mailing costs.

Fees. (7) The secretary of state shall determine the cost of supplying copies of the code, revisions thereto and the register. Such cost shall be the approximate cost of printing or duplicating and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of the code, revisions thereto and the register.

Deposit of fees. (8) All fees collected by the secretary of state shall be deposited to the general fund.

Petition to agency—rule making. Section 7. **Petition for adoption of rules.** An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. Within sixty (60) days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule making proceedings in accordance with section 4 of this act.

Judicial notice. Section 8. **Judicial notice of rules.** The courts shall take judicial notice of any rule filed and published under the provisions of this act.

CONTESTED CASES

Notice of hearing in contested cases. Section 9. **Notice — hearing — record.** (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

Inclusions. (2) The notice shall include:

(a) A statement of the time, place and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state

the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Rights of parties.

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. Disposition.

(5) The record in a contested case shall include: Record inclusions.

(a) All pleadings, motions, intermediate rulings.

(b) All evidence received or considered, including a stenographic record of oral proceedings when demanded by a party.

(c) A statement of matters officially noticed.

(d) Questions and offers of proof, objections, and rulings thereon.

(e) Proposed findings and exceptions.

(f) Any decision, opinion or report by the hearing examiner or agency member presiding at the hearing.

(g) All staff memoranda or data submitted to the hearing examiner or members of the agency as evidence in connection with their consideration of the case.

(6) The stenographic record of oral proceedings or any part thereof shall be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription shall be paid by the requesting party. Transcription.

(7) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact.

Section 10. Rules of evidence — official notice.

(1) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Rules of evidence.

Documentary evidence.

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

Right to cross-examine.

(3) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

Notice may be taken of facts.

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

Hearing examiners.

Section 11. **Hearing examiners — conduct of hearings — disqualification of hearing examiners and agency members.** (1) An agency shall have authority to appoint hearing examiners for the conduct of hearings in contested cases.

Powers and duties.

(2) Agency members or hearing examiners presiding over hearings shall be authorized to administer oaths or affirmations; issue subpoenas pursuant to section 20 of this act; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties. All testimony shall be given under oath or affirmation.

Disqualification.

(3) A hearing examiner or agency member may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case.

Section 12. **Examination of evidence by agency — pro-**

posed orders. When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties may waive compliance with this section by written stipulation.

Proposal for decision—service on parties.

Statement of reasons.

Waiver by stipulation.

Final orders.

Section 13. **Final orders — notification.** (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

Findings of fact—conclusive of law

Proposed findings

Notice.
Copies.

Indexing—public inspection.

Validity.

(2) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under section 18, issued after the effective date of this act. No such agency decision or order shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

Section 14. **Ex parte consultations.** Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of

Ex parte consultations forbidden.

rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, shall not communicate with any party or his representative in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate.

Licensing—
application of act.

Section 15. **Licenses.** (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this act concerning contested cases apply.

Abatement of
license expiration.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

Notice and
opportunity to
comply required.

(3) No revocation, suspension, annulment, withdrawal or amendment of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Judicial review
after exhaustion
of administrative
remedies.

Section 16. **Judicial review of contested cases.** (1) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this act. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency, unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

Party may question
validity of statute.

(2) Proceedings for review shall be instituted by filing a petition in district court within thirty (30) days after service of the final decision of the agency, or if a rehearing is requested, within thirty (30) days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business, or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

Petition to
district court.

Service.

The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved and the ground or grounds specified in subsection 7 of this section upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

Jurisdictional facts.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant, or the reviewing court may order, a stay upon terms which it deems proper.

Stay of
enforcement.

(4) Within thirty (30) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

Record of
proceedings.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court

Application to
present additional
evidence.

that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

Conduct of review. (6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

Judgment—court decisions. (7) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (g) because findings of fact, upon issues essential to the decision, were not made although requested.

Appeal to supreme court. Section 17. **Appeals.** An aggrieved party may obtain review of a final judgment of a district court under this act by appeal to the supreme court within sixty (60) days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from

district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

(1) If appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for twenty (20) days from the date of filing of the notice. Stay on appeal.

(2) If appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

GENERAL PROVISIONS

Section 18. **Declaratory rulings by agencies.** Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A declaratory ruling, or the refusal to issue such a ruling, shall be subject to judicial review in the same manner as decisions or orders in contested cases. Declaratory rulings—petitions.

Section 19. **Declaratory judgments on validity or application or rules.** The validity or application of a rule may be determined in an action for declaratory judgment if it is found that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business, or in which the agency maintains its principal office. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question. Declaratory judgments. District court.

Section 20. **Subpoenas and enforcement — compelling testimony.** (1) An agency conducting any proceeding subject to this act shall have the power to require the furnishing of such information, the attendance of such Subpoena power.

witnesses, and the production of such books, records, papers, documents and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may, and upon request of any party appearing in a contested case shall, issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees and mileage shall be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

Contempt
proceedings.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party, or to compel the giving of testimony deemed material by a party, the party may make such application. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

Right to counsel.

Section 21. Representation. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this act shall not be construed as requiring an agency to furnish counsel to any such person.

Service as in
civil actions.

Section 22. Service. Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this act and in

proceedings for judicial review thereof, shall be as prescribed for civil actions in the district courts.

Section 23. Construction and effect. Nothing in this act shall be deemed to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be deemed to supercede or modify any provision of this act, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

Construction and
effect.

Section 24. Repeal of inconsistent provisions. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

Repealing clause.

Section 25. Severability. The provisions of this act are severable, and if any part of provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining part of provisions of this act.

Severability clause.

Section 26. Time of taking effect. This act shall take effect on December 31, 1972, except that pending proceedings shall not be affected.

Effective December
31, 1972.

CHAPTER NO. 3

An Act to Apportion the Legislative Assembly According to the 1970 Federal Census; and Repealing Sections 43-106.1 and 43-106.2, R.C.M., 1947, and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Number of senators — senatorial districts and apportionment. The senate of the legislative assembly shall consist of fifty-five (55) members. The senatorial districts and the number of senators elected from each district are as follows:

55 member senate.
Districts.

Senatorial District No.	Number of Senators	District Consists of County or Counties
1	1	Carter, Fallon, Wibaux, Powder River
2	1	Dawson
3	1	Richland and McCone